

I. C. Security Printers and its workers' compensation insurance carrier, Transamerica Insurance (referred to jointly as "Security" hereafter) ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Eblen's award of benefits to S.A.R. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

### **ISSUES PRESENTED**

Security's motion for review challenges Judge Eblen's award of permanent total disability compensation to Mr. R. for injuries suffered in a work-related accident at Security on February 28, 1995. However, before considering Security's motion for review, the Appeals Board must determine whether the motion for review was filed within the 30-day time limit imposed by the Utah Administrative Procedures Act ("UAPA"; Title 63, Chapter 46b, Utah Code Ann.).

### **BACKGROUND**

In a preliminary order issued on July 21, 2004, Judge Eblen concluded that Mr. R. was permanently and totally disabled as a result of his work accident. Judge Eblen allowed Security until August 5, 2004, to state whether it would submit a reemployment plan for Mr. R..

As of August 6, 2004, Security had not notified Judge Eblen whether it intended to submit a reemployment plan. Judge Eblen therefore issued a final order awarding permanent total disability benefits to Mr. R.. The order included the following information regarding appeal rights:

Any party aggrieved by this decision may file a Motion For Review with the Adjudication Division of the Utah Labor Commission. The Motion For Review must set forth the specific basis for review and must be received by the Commission within 30 days from the date this decision is signed. . . .

On August 9, 2004, Judge Eblen received a letter from Security dated August 6, 2004, stating that Security intended to submit a reemployment plan for Mr. R. and asking for 90 days in which to do so. Not only was this letter untimely, but Judge Eblen had already issued her final order.

Security took no action to appeal Judge Eblen's final order. Instead, on August 17, 2004, Security filed a "Motion For Enlargement Of Time To File Rehabilitation Plan." This motion made no reference to Judge Eblen's final order, issued eleven days earlier, but instead asked for additional time to submit a reemployment plan.

During October 2004, Mr. R. began efforts to collect the benefits due under Judge Eblen's final order. Finally, on November 8, 2004, Security filed its "Motion For Reconsideration On The

Enlargement Of Time To File A Rehabilitation Plan Or, In The Alternative, Respondents' Motion For Review."

### **DISCUSSION**

Section 63-46b-12 of UAPA allows a party dissatisfied with an ALJ's decision 30 days in which to file a motion for review. A motion for review is not "filed" until it is actually received by the Commission.

In this case, Judge Eblen's decision was issued on August 6, 2004. The Appeals Board notes that Security submitted a letter to Judge Eblen on August 9, 2004, in which it elected to submit a reemployment plan for Mr. R.. However, Security's letter was untimely and did not reach Judge Eblen until after she had entered her final order in favor of Mr. R.. Security then submitted a motion on August 17, 2004, requesting additional time to submit a reemployment plan. But by that date, Security had already received Judge Eblen's final order, which foreclosed Security's right to submit a reemployment plan.

In summary, Security's submissions of August 9, 2004, and August 17, 2004, were unrelated to the final order Judge Eblen issued on August 6, 2004. Security did not file a motion for review of that final order until November 8, 2004, well beyond the 30-day period allowed by law. Because Security's motion for review was untimely, the Appeals Board has no jurisdiction to consider the merits of the motion for review.

### **ORDER**

The Appeals Board dismisses Security's motion for review as untimely. Judge Eblen's final decision of August 6, 2004, remains in effect. It is so ordered.

Dated this 31<sup>st</sup> day of January, 2005.

Colleen S. Colton, Chair  
Patricia S. Drawe  
Joseph E. Hatch